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Hon. Ann L. Aiken

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON
PORTLAND DIVISION

**CASCADIA WILDLANDS, THE
CENTER FOR BIOLOGICAL
DIVERSITY, and AUDUBON
SOCIETY OF PORTLAND,**

No. 3:12-cv-00961-AA

**DEFENDANT-INTERVENORS' MOTION
TO DISMISS**

Plaintiffs,

Request for Oral Argument

v.

JOHN KITZHABER, in his official Capacity
as Governor of Oregon and Chair Of the State
Land Board; **TED WHEELER** and **KATE
BROWN**, in their official capacity as members
of the State Land Board; **DOUG DECKER**, in
his official Capacity as Oregon State Forester
with the Oregon Department of Forestry;
LOUISE SOLLIDAY, in her official capacity
as Director of the Department of State Lands;
JOHN BLACKWELL, in his official capacity

as Chair of the Oregon Board of Forestry; **SYBIL ACKERMAN, CINDY DEACON WILLIAMS, NILS CHRISTOFFERSEN, TOM INSKO, GARY SPRINGER,** and **STEVE WILSON**, in their official capacity as Board Members of the Oregon Board of Forestry; **TOM SAVAGE**, in his official capacity as District Forester for the Astoria District; **JIM YOUNG**, in his official capacity as District Forester for the Coos District; **ANDY WHITE**, in his official capacity as the District Forester for the Forest Grove District; and **DAN GOODY**, in his official capacity as the District Forester for the Tillamook District,

Defendants,

and

OREGON FOREST INDUSTRIES COUNCIL, a non-profit corporation, **DOUGLAS TIMBER OPERATORS**, a non-profit corporation, **HAMPTON TREE FARMS INC.**, an Oregon Corporation, **SENECA SAWMILL COMPANY**, an Oregon Corporation, and **SCOTT TIMBER CO.**, an Oregon corporation,

Defendant-Intervenors.

LOCAL RULE 7-1 CERTIFICATION

Pursuant to LR 7-1, counsel for defendant-intervenors Oregon Forest Industries Council, Douglas Timber Operators, Hampton Tree Farms, Inc., Seneca Sawmill Company, and Scott Timber Co. (collectively, “Defendant-Intervenors”) conferred with counsel for the respective parties and made a good faith effort to resolve the issues pertaining to this motion by telephone conference. Counsel for the State Defendants indicated that they do not oppose the motion. Counsel for plaintiffs indicated that they will oppose this motion.

MOTION

Pursuant to Federal Rule of Civil Procedure 12(b), Defendant-Intervenors move to dismiss certain of plaintiffs' claims alleged in their complaint (Dkt. No. 1) for failure to state a claim upon which relief can be granted and lack of subject matter jurisdiction. Specifically, Defendant-Intervenors seek to dismiss plaintiffs' claim alleging that the State Defendants' adoption and application of "take avoidance policies" violates Section 9 of the Endangered Species Act. Complaint at ¶¶ 6, 190 and 196. Defendant-Intervenors also seek to dismiss plaintiffs' complaint to the extent that it seeks to compel the State Defendants to obtain an Incidental Take Permit from the U.S. Fish and Wildlife Service. Complaint at ¶ 7; Complaint, Request for Relief at ¶ 5.

Further, the State Defendants are filing their own motion to dismiss, seeking to dismiss from plaintiffs' complaint certain claims challenging the State's adoption and implementation of various planning documents and also to dismiss from the case the Board of Forestry members, the State Land Board members and the director of State Lands. In the interest of avoiding redundant briefing, Defendant-Intervenors have not addressed those arguments in their memorandum of law. However, Defendant-Intervenors hereby fully join in the State Defendants' motion and reserve the right to address plaintiffs' response to the State Defendants' motion in Defendant-Intervenors' reply brief.

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This motion is supported by the accompanying memorandum of law and the pleadings and exhibits on file with the Court.

DATED this 7th day of August, 2012.

LAW OFFICES OF RONALD S. YOCKIM

s/ Dominic M. Carollo

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